IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

THURSDAY, THE 19TH OCTOBER 2006 / 27TH ASWINA 1928

Bail Appl..No. 4289 of 2006(A)

CRIME NO.130/2006 OF VIZHINJAM POLICE STATION

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PETITIONER:

SUNILKUMAR, S/O. PRABHAKARAN,
T.C.45/2482, MURIPALATHADI VEEDU,
VRINDAVAN LANE, CHALA WARD,
THIRUVANANTHAPURAM DISTRICT.
(THANNIVILA VEEDU, MUKKOLA, VIZHINJAM DESOM AND VILLAGE.)

BY ADV. SRI.SASTHAMANGALAM S. AJITHKUMAR
SRI.RENJITH B.MARAR

RESPONDENTS:

CIRCLE INSPECTOR OF POLICE,
VIZHINJAM, REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 19/10/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

J.M.JAMES, J.

B.A. 4289/2006

DATED THIS THE 19TH DAY OF OCTOBER, 2006

O R D E R

The petitioner is facing the accusation for the offence punishable under Section 376 IPC, as he had committed rape on a minor girl, who is born to his wife of her first husband. After the delivery, the child was thrown to the adjacent tea estate. With the intervention of the police, the child was rescued. The police registered the case against the minor girl, who delivered the infant, as well as her mother together with the petitioner, for different offence. The petitioner had surrendered on 6.6.2006 in crime No.130/2006 of Vizhinjam police station. He approached this Court for bail.

2. While the bail application was pending, without disclosing the same, the petitioner filed another application for statutory bail. The learned Magistrate, unaware of the pendency of the bail application before this Court, granted bail to him on 18.8.2006.

3. A report was called from the learned Magistrate. He informed that he was unaware of the pendency of the matter. The matter show that a woman, by name Parvathy Sarojam, was behind the filing of that petition and the counsel of Neyyattinkara Magistrate Court was also involved in it.

4. Finding the foul play in the entire matter, I had directed the Registrar of Subordinate Judiciary to enquire into the whole episode and file a report, as it was stated before this Court, through the counter affidavit filed by the petitioner, that the said Parvathy Sarojam had collected huge amount of Rs.24,000/- from his mother for getting bail. But she did not pay it to the counsel except for a paltry sum. She claimed herself to be the clerk of an advocate practicing before the Magistrate Court. She also filed an affidavit before this Court along with this application, stating that she is a cousin of the petitioner. However, this was being denied by the petitioner, when he appeared before me.

5. On getting the entire facts, I had directed the petitioner to be present before this Court. Accordingly, he appeared before this Court on 12.9.2006, on which date he filed a statement also. After considering the materials, I had directed him to surrender before the Judicial Magistrate of First Class-II, Neyyattinkara, on 19.9.2006 at 11.00 a.m. Accordingly he surrendered and he remains in judicial custody.

6. When the application came up for consideration, the learned counsel submitted that the petitioner had completed 90 days in judicial custody, namely from 6.6.2006 to 16.8.2006 and from 19.9.2006 till date.

7. After hearing both sides and considering the materials that are placed before me, without affecting the further proceedings that may be initiated against the petitioner, the said Parvathy Sarojam, the counsel concerned and anyone else in this case, I grant bail and release the petitioner from jail, subject to the following

conditions:-

(a). The petitioner shall execute a bond for Rs.25,000/-, with two solvent sureties, each for the like sum, to the satisfaction of the Judicial Magistrate of First Class-II, Neyyattinkara.

(b). The petitioner shall report before the Investigating Officer, once in a week on every Wednesday, between 10.00 a.m and 11.00 a.m., for a period of three months, starting from 25.10.2006, and thereafter, on the first working day of every month, between the same timings, till the completion of the trial and final disposal of the case.

(c). The petitioner shall not cause any threat to the victim, her mother or to any witnesses using his influence and control over them, while he is on bail.

(d). The petitioner shall not leave the

State of Kerala, till the disposal of the cases as well as the proceedings thereon, that may be initiated basing on the enquiry report submitted by the Registrar.

The application is allowed as above.

Put up the case file for further action.

J.M.JAMES
JUDGE

mrcs

The application under Section 439 Cr.P.C., was pending before this Court. The petitioner is the accused, who committed rape on a sixteen year old girl, who is none other than the daughter of his second wife. She became pregnant and delivered a child. The child was abandoned. Accordingly crime No.115/2006 of Vizhinjam Police station, was registered for abandoning the child, against the sixteen year old girl, who delivered the child, as well as her mother, the wife of the petitioner herein. The same is under investigation. Meanwhile, on the statement of the victim, the sixteen year old girl, crime No.130/2006 of Vizhinjam Police Station, was also registered.

2. When the bail application came up before this Court, I heard the learned counsel Mr. Sasthamangalam S.Ajithkumar. Considering the seriousness of the matter,

the bail was not instantly granted on 7.8.2006 and posted to this date.

3. When the application came up today, the learned counsel submitted that the petitioner had moved the bail before the Magistrate Court and the learned Magistrate had granted bail. Therefore, the counsel seeks permission to withdraw the application. The counsel also submits that as the brief has been entrusted to another counsel of the Mofussil station, he no more holds the brief of the petitioner.

4. The learned Public Prosecutor submitted that the C.D file, in respect of crime No.130/2006 of Vizhinjam Police Station, is in his possession from 26.7.2006 onwards. Thus it is clear that the learned Magistrate had passed the order without the perusal of the C.D file, and going through the facts in detail.

5. In the above facts situation, I direct the learned Magistrate to send a detailed report together with the copy of the order passed by him, granting bail to

the petitioner, Sunilkumar, in crime No.130/2006 of Vizhinjam Police Station, within ten days from today.

Treat the matter as partly heard. Post on 28.8.2006.

J.M.JAMES
JUDGE

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J.M.JAMES, J.

B.A. 4289/2006

DATED THIS THE 18TH DAY OF SEPTEMBER,2006

O R D E R

The petitioner preferred the application for bail, under Section 439 Cr.P.C., as he was in judicial custody from 6.6.2006, the date of his surrender, in crime No.130/2006 of Vizhinjam police station. The application was pending before this Court, for consideration. However, without disclosing the same, the petitioner moved an application before the Court below, and obtained the bail. Hence, I called for a

statement of the Magistrate. As per the report, the Judicial Magistrate of First Class-II, Neyyattinkara, stated that the pendency of the application before High Court, was not brought to his notice and he granted bail, as the petitioner was in judicial custody for over 60 days.

2. The facts of the case are that the petitioner was living with a woman by name Mary. She was above 40 years, whereas the petitioner is below 30. Mary was married earlier. She had a minor girl, below of age of 16 years, born to Mary, in her first marriage with another man. The petitioner, while living with Mary, impregnated the minor girl and the girl delivered a male child in the S.A.T hospital, Thiruvananthapuram. The petitioner took the girl to the house, where he was living with Mary. Thereafter, the child was thrown in an adjacent property. On the complaint of the local people, the police took the child to the hospital. Thereafter, it was traced that the child was born to the minor girl, consequent on the rape, committed on her, by the

petitioner. Therefore, crime No.130/2006 had been registered against the petitioner for the offence punishable under Section 376 IPC. Another crime No.115/2006 was also registered against Mary as well as her daughter. Both the cases are under investigation, by the Investigating Officer. That was the reason why this Court did not grant bail, even after 60 days, and posted the matter, thereafter.

3. The turn of the events show that one Parvathy Sarojam, aged 48 years, Geetha Bhavan, Oadamkuzhi, Thirumala P.O., Thiruvananthapuram, who claims to be the cousin of the petitioner, had filed an affidavit before this Court for obtaining bail to the petitioner. It is submitted by the petitioner before this Court that Parvathy Sarojam is not related to him and she approached his mother for arranging bail to the petitioner. As per the statement dated 12.9.2006 filed by him. On the orders of this Court, Parvathy Sarojam collected Rs.24,000/-, claiming that she is the clerk of the

Advocate at Neyyattinkara. Of Rs.24,000/-, Rs.1,000/- was paid to the advocate S.Sunil Raj at Neyyattinkara and Rs.2,000/- to advocate Sasthamangalam S. Ajithkumar, who appeared before this Court, in B.A.No.4289/2006.

4. One Jayakumar Abraham was the advocate who was appearing before the Magistrate Court, Neyyattinkara, and moved an application for bail before that Court. However, from the order sheet refusing bail, I find that name of the advocate shown is Sasthamangalam S. Ajithkumar. No name of the advocate is shown in the order, granting bail by the learned Magistrate dated 16.8.2006.

5. However, the submissions made before this Court show that Sasthamangalam S. Ajithkumar was unaware of the filing of the application before the Court below, while the bail application was pending before this Court. Though in the statement dated 12.9.2006 the petitioner states that he had not committed any fraud but

the fact remains that there is a foul play in obtaining bail without disclosing the pendency of the petition as well as not granting of the bail after completion of 60 days, by this Court, because of the peculiar facts of this case, involving the petitioner. In the above facts situation, I pass the following orders.

(a). The petitioner shall surrender before the Judicial Magistrate of First Class-II, Neyyattinkara, on 19.9.2006 at 11.00 a.m.

(b). The learned Magistrate shall remand him to judicial custody until further orders.

(c). The Registrar of Subordinate Judiciary, shall conduct a fact finding enquiry, as to who filed the application before the Judicial Magistrate of First Class-II, Neyyattinkara, in crime No.130/2006 of Vizhinjam police station, praying for bail of the petitioner, which led to the passing of the order dated 16.8.2006, without disclosing the pendency of B.A.No.4289/2006, before this Court.

(d). The Registrar shall also collect all the required informations from advocate Jayakumar Abraham and S.Sunil Raj of Neyyattinkara, and also from other advocates and persons from whom, the true facts could be gathered for arriving at a right conclusion on the matter. The involvement of Parvathy Sarojam and the facts stated by her, in the affidavit, dated 9.7.2006 as well as in the statement filed by the petitioner on 12.9.2006, shall also be taken into consideration, by the Registrar.

6. The report shall be filed by the Registrar within 15 days from the date of the receipt of the copy of this order.

Post the application after 15 days.

J.M.JAMES
JUDGE

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